

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA)
v.) Criminal No. 2:14cr53
DAVID G. WILKINSON,)
Defendant.)

UNITED STATES' POSITION ON SENTENCING

The United States of America, through its attorneys, Jessica D. Aber, United States Attorney for the Eastern District of Virginia, and Peter S. Duffey, Assistant United States Attorney, hereby submits its position with respect to the defendant's motion for unconditional release. First, to initiate the process of discharge under 18 U.S.C. § 4243(f), the director of the facility where an acquitted person is hospitalized must make a finding that the person has recovered from their mental disease or defect and "no longer creates a substantial risk of bodily injury to another person or serious damage to the property of another." Such a certificate, in the form of a letter and corresponding documents (a 12-page report) was submitted to the Court on October 4, 2021. ECF No. 68.

The report, written by Dr. Evan Du Bois (the treating psychologist at FMC Butner), opined that the defendant could be discharged from continued commitment, but he did recommend that Mr. Wilkinson should remain compliant with a “psychotropic medication regimen as determined by his treating psychiatrist and should remain on a mood stabilizing

medication.” He also recommended that he engage in therapy to treat his symptoms of PTSD.

Id.

The Court conditionally released the defendant under conditions noted in its Order dated November 1, 2021. One of the conditions of release was that the defendant successfully complete the PRRTP, a VA program in Pittsburgh, Pennsylvania. The defendant was admitted to that program on November 10, 2021, but was unsuccessfully discharged on December 23, 2021. The Court issued a summons for the defendant based on that apparent violation. On January 12, 2022, the defendant appeared for a hearing, and this Court continued that hearing until April 12, 2022, to allow the defendant to participate in mental health and psychiatric treatment through the Center for Clinical and Forensic Services. ECF No. 78.

The United States is in receipt of a letter written by C. Stuart Halloran, who has been treating the defendant weekly beginning on January 24, 2022. Mr. Halloran speaks favorably of the defendant in his letter, and notes that he appears to have benefitted from his treatment and *does not currently present as a risk to himself or others.* ECF No. 82-1. In the government’s view, however, the letter falls short in that it fails to address whether the defendant can be released *unconditionally* at this time. Specifically, when released (conditionally) from Butner FMC, his treating physician recommended that the defendant remain on “psychotropic medication regimen as determined by his treating psychiatrist,” and should also remain on “mood stabilizing medication.”

In the government’s view, these are important questions that bear directly on the issue of whether the defendant’s unconditional release would create a substantial risk of bodily injury to

another person. *See* 18 U.S.C. § 4243(f)(1). It is the defendant's burden here, and the United States does not believe that the letter from Mr. Halloran meets that threshold.

In sum, the United States has suggested to both defense counsel, and the probation officer, that Mr. Halloran be made available for the hearing set for June 27, 2022. At that time, Halloran could answer these and other questions that the parties or the Court has for him.

CONCLUSION

For the reasons stated above, the United States submits that the defendant has failed to meet his burden, at this time, but would suggest a hearing on this matter be conducted on June 27, 2022.

Respectfully submitted,

JESSICA D. ABER
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/s/

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